HIGH COURT OF UTARANCHAL AT NAINITAL

Writ Petition No. 906 (MS) of 2004

Ram Kishan Mittal
S/o Sh. Jyhoti Prasad Mittal
R/o 35/6 Subhash Road,
Dehradun and other. ..... Petitioners

Vs

Civil Judge (S. D)Dehradun
And others. ..... Respondents.

Counsel for the petitioner Sh. Arvind Vashisth.
Standing Counsel for the respondent.

Dated: 24-9-204

Hon'ble Rajesh Tandon J.

Heard Sh. Arvind Vashisht learned counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition the petitioners have prayed for a writ, order or direction in the nature of certiorari quashing the order dt. 28.7.2003 passed by the Civil Judge (S.D.) Dehradun.

Briefly stated the Original suit No. 754 of 2002 was filed against the petitioners by respondent No.4 and 5 for injunction and possession in respect of the part of property No. 21, Raipur, Road Dehradun.

The petitioner have filed there within statement and respondent no.4 and 5 have already filed their replication.

Petitioners have filed writ petition No. 488 of 2004 (MS) for a direction for the disposal of the suit itself, which was decided on 28-6-2004.

Petitioners have prayed for consolidating both the suits. The Trial Court has rejected the application on the ground that

a proper application has not been made to that effect by the petitioner giving the details of both the courts.

Order 4 (A)of the Code of Civil Procedure provides as under:-

> *"Consolidation of suits and proceedings:- When two or more suits or proceedings are pending in the same Court, and the court is of opinion that it is expedient in the interest of Justice, it may by order direct their joint trial , whereupon all such suits and proceedings may be decided upon the evidence in all or any of such suits or proceedings."*

Liberty is given to the petitioners to file a proper application under order 4 (A) of the Code of Civil Procedure for consolidating both the suits. The court below shall pass an appropriate order on the application of the petitioner on merits.

Both the suits having been filed by the same parties, which involves the same question, the court below shall exercise his powers for consolidating both the suits.

The petitioners are directed to file an application, within a period of one month from the filing of the certified copy of the order.

Subject to the aforesaid observation, the writ petition is dismissed. No order as to costs.

Dated:- 24-9-2004 (RAJESH TANDON J.)

M.K.